

Message

From: McDavit, Michael W. [Mcdavit.Michael@epa.gov]
Sent: 12/7/2017 10:07:20 PM
To: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]
Subject: FW: talking points for week of 12/4-12/8

Here is a more full version of KH's TPs

404(g) programs (staff contact: Kathy Hurld)

Menominee Tribe of WI –

Ex. 5 Deliberative Process (DP)

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6th Circuit Oral Argument on Michigan Case: On December 6th, Ellen J. Durkee, Appellate Section of DOJ's ENRD, presented oral argument in Marquette County Road Comm'n v EPA, defending the US government's position that an EPA objection to a state CWA 404 permit is not a final agency action as the permitting process does not end with EPA's objection. Ms. Durkee said the justices did appear to understand section 404(j) (the section of the Act regarding EPA authority to object to state 404 permits that are inconsistent with the Act and/or 404(b)(1) guidelines) and that such objections are not a veto or denial of a permit. The Court did inquire as to why she thought Hawkes did not apply but did not inquire further after she responded.

Florida Assumption –

Ex. 5 Deliberative Process (DP)

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Arizona Assumption – On December 4th Arizona held a public meeting regarding their efforts to assume the CWA section 404 permitting program. R9 listened in. The state indicated they were looking to assume in 2019. During the call the state was unable to answer many of the questions raised, but they are still very early in the process. R9 and OWOW are working with state staff to help them understand the requirements and program (e.g, what needs to be in statute vs what could be in regulations or guidance) as the state works to craft implementing statutory language.

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